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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,651	01/07/2004	Richard C. Fuksa	4447-103017-US	4106

7590 02/17/2009  
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Floor 22  
120 South Riverside Plaza  
Chicago, IL 60606-3912

EXAMINER
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SCHNEIDER, CRAIG M

ART UNIT	PAPER NUMBER
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3753

MAIL DATE	DELIVERY MODE
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02/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RICHARD C. FUKSA and JIM ZHU

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Application 10/752,651  
Technology Center 3700

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Mailed: February 17, 2009

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Before KRISTA M. ZELE, *Deputy Chief Appeals Administrator*.  
ZELE, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL

This application was electronically received by the Board of Patent Appeals and Interferences on December 2, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure*

(MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

....

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed February 22, 2008, is deficient because the "Evidence Relied Upon" section fails to include the reference(s) Malloy et al. (U.S. 4, 146,206), Runge (U.S. 4, 182, 217), Kindt (U.S. 2,221,141), Hinkel (U.S. 6,435,758) cited on page(s) 5, and 6, in the Examiner's Answer's grounds of rejection of claims 4, 5, 6, 7 under 37 USC 41.39

Appropriate correction is required.

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1.) to issue a PTO-90 citing the missing references listed under the Evidence Relied Upon section, paragraph (8); and
- 2.) such further action as may be required.

Application No. 10/752,651

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

KZ/MTV/rvb

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